



The International Residual Mechanism for Criminal Tribunals (“Mechanism”) was established on 22 December 2010 by the United Nations Security Council to continue the jurisdiction, rights, obligations and essential functions of the International Criminal Tribunal for Rwanda (“ICTR”) and the International Criminal Tribunal for the former Yugoslavia (“ICTY”), which closed in 2015 and 2017, respectively.

CASE INFORMATION SHEET

Pursuant to Article 3 of the Transitional Arrangements, the Mechanism has competence over review proceedings of ICTR judgements for which the application for review was filed on or after 1 July 2012.

MICT-12-29

AUGUSTIN NGIRABATWARE



In July 1990, Ndirakobuca was appointed Minister of Planning, a position he retained as part of the Interim Rwandan Government in April 1994. He was also a member of the Préfecture Committee of the National Republican Movement for Democracy and Development (“MRND”) political party in Gisenyi Préfecture, the National Committee of the MRND, and the technical committee of Nyamyumba Commune.

Indictment	Initial indictment filed on 28 September 1999. Operational indictment filed on 14 April 2009.
Arrest	Arrested on 17 September 2007 in Germany. Transferred to the ICTR on 8 October 2009.
ICTR Trial Chamber Judgement	<p>Delivered on 20 December 2012.</p> <p>Judge William H. Sekule (Presiding) Judge Solomy Balungi Bossa Judge Mparany Mamy Richard Rajohnson</p> <p>The Trial Chamber convicted Ndirakobuca of direct and public incitement to commit genocide, instigating and aiding and abetting genocide and, under the extended form of joint criminal enterprise (“JCE”), rape as a crime against humanity. He was sentenced to 35 years of imprisonment.</p>
Mechanism Appeals Chamber	<p>Judge Theodor Meron (Presiding) Judge Bakone Justice Moloto Judge Christoph Flügge Judge Burton Hall Judge Liu Daqun</p>
Mechanism Appeals Chamber Judgement	<p>Delivered on 18 December 2014.</p> <p>The Appeals Chamber reversed Ndirakobuca’s conviction for rape as a crime against humanity under the extended form of JCE and affirmed his remaining convictions. In light of the reversal, the Appeals Chamber reduced Ndirakobuca’s sentence to 30 years of imprisonment.</p>
Request for Review of Appeal Judgement	<p>Granted on 19 June 2017.</p> <p>On 8 July 2016, Ndirakobuca requested the Mechanism to review the Appeal Judgement. On 25 July 2016, the President assigned a bench of the Appeals Chamber to consider the request for review.</p>
Mechanism Appeals Chamber assigned to Review of Judgement	<p>Judge Theodor Meron (Presiding) Judge Joseph E. Chiondo Masanche Judge Lee G. Muthoga Judge Aminatta Lois Runeni N’gum Judge Gberdao Gustave Kam</p>
Status of the Case	Completed.



REVIEW PROCEEDINGS (COMPLETED)

On 8 July 2016, Augustin Ngirabatware filed before the Mechanism a request for review of the Appeal Judgement. On 25 July 2016, Judge Theodor Meron, President of the Mechanism, assigned a bench of the Appeals Chamber of the Mechanism to consider the request for review.

On or around 21 September 2016, Judge Aydin Sefa Akay, a member of the bench of the Appeals Chamber in the *Ngirabatware* case, was detained in Turkey in relation to allegations connected with the events of July 2016 directed against the constitutional order of Turkey. On 9 March 2017, the President of the Mechanism notified the United Nations Security Council of the failure of the Government of Turkey to comply with an order to cease all legal proceedings against Judge Akay and to ensure his release from detention.

Following Judge Akay's provisional release from detention, on 19 June 2017, the Appeals Chamber, in its full capacity, issued a decision granting Ngirabatware's request for review of the Appeal Judgement. The Appeals Chamber found that the purported recantations of four Prosecution witnesses constituted a new fact for the purpose of Rule 146 of the Rules, and determined that a review hearing should be held to allow the parties to provide supporting and rebuttal evidence concerning the new fact.

On 19 December 2017, the Appeals Chamber: (i) granted Peter Robinson's request to withdraw as Ngirabatware's counsel; (ii) instructed the Registrar to replace Robinson; and (iii) adjourned the review hearing, previously scheduled for February 2018, until further order of the Appeals Chamber in order to provide the new counsel with adequate time to prepare. On 19 January 2018, the Registrar assigned Diana Ellis and Sam Blom-Cooper as Counsel and Co-Counsel, respectively, to represent Ngirabatware in the review proceedings before the Mechanism.

On 23 July 2018, Judge Meron, as the President of the Mechanism, assigned Judge Lee G. Muthoga to replace Judge Akay on the Appeals Bench, following the UN Secretary-General's decision not to renew the appointment of Judge Akay on the Mechanism's roster of Judges.

A review hearing, scheduled to take place in September 2018 was adjourned, following Ngirabatware's request for additional time to review the voluminous material disclosed by the Prosecution in the *Turinabo et al.* contempt case, taking into consideration its direct relevance to the review proceedings.

The review hearing was held at the Mechanism's branch in Arusha, Tanzania, from 16 to 24 September 2019. The parties made oral submissions on 23 September 2019 on whether Ngirabatware had presented sufficient evidence capable of belief to establish the new fact in relation to his convictions.

On 24 September 2019, the Appeals Chamber decided that Ngirabatware had not presented sufficient evidence capable of belief to establish the new fact. It, therefore, concluded that it was unnecessary to hear Prosecution evidence in rebuttal and announced that it would pronounce the judgement on review on 27 September 2019.

On 27 September 2019, the Appeals Chamber, pursuant to Article 24 of the Statute and Rule 147 of the Rules, decided, unanimously, that the Appeal Judgement remains in force in all respects.



CASE BACKGROUND INFORMATION

INDICTMENT

Augustin Ngirabatware was charged by the ICTR with the crimes of **conspiracy to commit genocide, genocide, complicity in genocide, direct and public incitement to commit genocide, and extermination and rape as crimes against humanity** in Gisenyi prefecture, Rwanda, between 1 January and 17 July 1994.

Ngirabatware was alleged to bear individual criminal responsibility pursuant to Article 6(1) of the ICTR Statute for instigating, ordering, committing, including through participation in a JCE, or otherwise aiding and abetting various persons to plan or commit the crimes charged.

The indictment also alleged that Ngirabatware was responsible as a superior pursuant to Article 6(3) of the ICTR Statute for the crimes of genocide or complicity in genocide.

One count of conspiracy to commit genocide*

One count of genocide

One count of complicity in genocide

One count of direct and public incitement to commit genocide

Two counts of crimes against humanity

- Extermination (Count 5)
- Rape (Count 6)

**The ICTR Prosecution later dropped this count.*

ICTR TRIAL CHAMBER JUDGEMENT

On 20 December 2012, Trial Chamber II of the ICTR convicted Augustin Ngirabatware of committing direct and public incitement to commit genocide based on his speech at a roadblock on the Cyanika-Gisa road in Nyamyumba Commune.

It also found him guilty of instigating and aiding and abetting genocide based on his role in distributing weapons and his statements at two roadblocks in Nyamyumba Commune on 7 April 1994. Ngirabatware was also convicted, under the extended form of JCE, of rape as a crime against humanity based on the rape of a Tutsi woman by members of the Interahamwe.

The Trial Chamber sentenced Ngirabatware to 35 years of imprisonment.

Start of ICTR Trial	23 September 2009			
Prosecution Case	Started	23 September 2009	Closed	31 August 2010
Defence Case	Started	16 November 2010	Closed	22 February 2012
Closing Arguments	Started	23 July 2012	Closed	25 July 2012
ICTR Trial Chamber Judgement	20 December 2012		Verdict	35 years of imprisonment



MECHANISM APPEALS CHAMBER JUDGEMENT

Augustin Ngirabatware filed an appeal before the Mechanism challenging his convictions and sentence.

On 18 December 2014, the Appeals Chamber of the Mechanism unanimously affirmed Ngirabatware's conviction for direct and public incitement to commit genocide.

A majority of the Appeals Chamber also affirmed his conviction for instigating and aiding and abetting genocide. However, the Appeals Chamber found that the ICTR Trial Chamber erred in expanding the charges regarding Ngirabatware's contribution to a JCE to exterminate the Tutsis. The Appeals Chamber found that, since the Prosecution failed to prove at trial Ngirabatware's contribution to the common purpose of exterminating the Tutsi civilian population pleaded under the count of extermination, Ngirabatware's conviction for rape pursuant to the extended form of JCE could not be sustained. As a consequence, the Appeals Chamber unanimously reversed Ngirabatware's conviction for rape as a crime against humanity under the extended form of JCE.

In light of this reversal, the Appeals Chamber reduced Ngirabatware's sentence to a term of 30 years of imprisonment.

MECHANISM REVIEW JUDGEMENT

On 27 September 2019, the Appeals Chamber, pursuant to Article 24 of the Statute and Rule 147 of the Rules, decided, unanimously, that the Appeal Judgement remains in force in all respects.

The Appeals Chamber rejected Ngirabatware's attempt to show in review proceedings that the four key witnesses underpinning his convictions, for direct and public incitement to commit genocide and instigating and aiding and abetting genocide, had truthfully recanted their trial testimonies. The Appeals Chamber decided that the appeal judgement, sentencing Ngirabatware to 30 years of imprisonment for these crimes, remains in force.

The Appeals Chamber found that Ngirabatware had not presented sufficient evidence capable of belief that the witnesses had truthfully recanted. It observed that the circumstances surrounding the recantations of the four witnesses, including evidence that the witnesses received or sought financial incentives in connection with their recantations, as well as the fact that the recantations may have been orchestrated by others, raised considerable suspicion. Notably, two of the four witnesses renounced their recantations at the review hearing and affirmed the truth of their trial testimony against Ngirabatware.

STATISTICS

ICTR trial days	154						
Total exhibits admitted at trial	310	Prosecution	93	Defence	216	Chamber	1
Total witnesses called at trial	62	Prosecution	27	Defence	35	Chamber	0

For more information please visit the Mechanism website www.irmct.org.

For press inquiries, email mict-press@un.org.